

46 Am. Jur. 2d Judges § 188

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Judges

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IX. Disqualification to Act in Particular Case


C. Remedies and Procedure

4. Hearing, Determination, and Appeal

§ 188. Action on motion to disqualify judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(1), 51(4)

Forms

Forms relating to orders and judge disqualification or withdrawal, generally, see Am. Jur. Pleading and Practice Forms, Judges; Am. Jur. Pleading and Practice Forms, Criminal Procedure [\[Westlaw®\(r\) Search Query\]](#)

The means for the determination of whether a judge is disqualified in a particular case may be established by the state legislature, subject to any constitutional provisions;¹ where the legislature has not so provided, the procedure is controlled by court rule or by the law as developed by the courts of the jurisdiction.²

When a recusal motion is presented to a court, the court is required to promptly act on the motion before resolving any other matters.³ A judge's failure to rule on a recusal motion within the statutory time frame did not require automatic recusal, where the clerk's office failed to forward the motion to the judge, the movant mistakenly mailed a copy of the motion to the wrong courthouse, and the judge promptly ruled on the motion after becoming aware of it and receiving it.⁴ On the other hand, a litigant's motion to disqualify a judge was deemed to have been granted due to the fact that the motion was not ruled on within 30 days of its service, as required by rule; the 30-day rule was to be applied strictly.⁵

Footnotes

- 1 State v. Brown, 1912 OK CR 371, 8 Okla. Crim. 40, 126 P. 245 (1912).
- 2 State ex rel. McAllister v. Slate, 278 Mo. 570, 214 S.W. 85, 8 A.L.R. 1226 (1919).
- 3 Hemingway v. Superior Court, 122 Cal. App. 4th 1148, 19 Cal. Rptr. 3d 363 (4th Dist. 2004); State ex rel. Joyce v. Baker, 141 S.W.3d 54 (Mo. Ct. App. E.D. 2004).
- 4 Tobkin v. State, 889 So. 2d 120 (Fla. 4th DCA 2004).
- 5 Hilliard v. State, 109 So. 3d 878 (Fla. 1st DCA 2013).

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